

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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No. 6

This issue contains

U.S. Customs Service

T.D. 83-31

Proposed Rulemaking

Recent Unpublished Customs Service
Decisions

U.S. Court of International Trade

Slip Op. 83-5

Protest Abstracts P83/11 Through P83/25

Reap Abstracts R83/81 Through R83/99

International Trade Commission Notices

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 83-31)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: January 19, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Ace Transportation, Inc., P.O. Box 91714, Lafayette, LA; motor carrier; The Continental Ins. Co.	Nov. 29, 1982	Dec. 13, 1982	New Orleans, LA \$25,000
Aroostook Van Lines, Inc.—See Gagnon & Son, Mover, Inc.			
Bradley Air Services Ltd., Carp Airport, Carp, Ontario, Canada; air carrier; Ins. Co. of North America	July 31, 1982	July 31, 1982	Buffalo, NY \$25,000
The Colorado & Southern Railway Co., 1405 Curtis, Denver, CO; rail carrier; St. Paul Fire & Marine Ins. Co. D 11/29/82	Sept. 27, 1941	Nov. 15, 1941	El Paso, TX \$50,000
Cunningham Distributing Corp., 1100 2nd Ave., SW, Great Falls, MT; motor carrier; St. Paul Fire & Marine Ins. Co. D 12/3/82	Oct. 26, 1979	Oct. 26, 1979	Great Falls, MT \$25,000
D & W Forwarders Inc., 81 Orenda Rd., Brampton, Ontario, Canada; motor carrier; Aetna Casualty & Surety Co. (PB 2/9/79) D 11/29/82 ¹	Nov. 24, 1982	Nov. 29, 1982	Buffalo, NY \$50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Dallas & Mavis Forwarding Co., Inc., 4314-39th Ave., Kenosha, WI; motor carrier; Safeco Ins. Co. of America	Oct. 1, 1982	Dec. 13, 1982	Milwaukee, WI \$25,000
Economy Transport, Inc., 1205 St. Louis St., New Orleans, LA; motor carrier; Fireman's Fund Ins. Co.	Oct. 4, 1982	Nov. 18, 1982	New Orleans, LA \$25,000
Empire Float & Crane Service, 231 South Service Rd., Grimsby, Ontario, Canada; motor carrier; U.S. Fidelity & Guaranty Co.	Nov. 10, 1982	Dec. 9, 1982	Buffalo, NY \$25,000
Gagnon & Son, Mover, Inc. and/or Aroostook Van Lines, Inc., P.O. Box 247, Fort Fairfield, ME; motor carrier; The Aetna Casualty & Surety Co.	Aug. 24, 1982	Nov. 29, 1982	Portland, ME \$25,000
Hamilton Trucking, Inc., 17 S.W. 4th Ave., Fort Lauderdale, FL; motor carrier; Old Republic Ins. Co.	Nov. 16, 1982	Nov. 16, 1982	Miami, FL \$25,000
Hemingway Transport, Inc., 438 Dartmouth St., New Bedford, MA; motor carrier; Ins. Co. of North America D 12/5/82	Oct. 11, 1980	Oct. 24, 1980	Boston, MA \$50,000
Humes Transport Ltd., 2492 St. Clair Ave., W., Toronto, Ontario, Canada; motor carrier; Hartford Fire Ins. Co. D 11/29/82	Dec. 3, 1972	Dec. 15, 1972	Detroit, MI \$50,000
IKO Forwarders Ltd.—See D & W Forwarders Inc.			
Jaron Trucking Co., 123 Christie St., Newark, NJ; motor carrier; Peerless Ins. Co.	Oct. 26, 1982	Dec. 2, 1982	Newark, NJ \$50,000
Kentucky Container Service, Inc. 1101 Rowan St., P.O. Box 4574, Louisville, KY; contract carrier; Fidelity & Deposit Co. of MD	Oct. 14, 1982	Oct. 20, 1982	Cleveland, OH \$100,000
Kingsville Produce & Trucking, 179 Landsdown Ave., Kingsville, Ontario, Canada; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 3, 1982	Nov. 26, 1982	Buffalo, NY \$25,000
Kopak, Inc., dba: K Cartage, 4320 N.W. 72nd Ave., Miami, FL; motor carrier; Old Republic Ins. Co. (PB 9/30/80) D 11/1/82 *	Nov. 1, 1982	Nov. 1, 1982	Miami, FL \$25,000
Laurel Hill Trucking Co., 614 New County Rd., Secaucus, NJ; motor carrier; Sentry Ins., a Mutual Co. (PB 10/16/80) D 11/15/82 *	Oct. 15, 1982	Nov. 15, 1982	Newark, NJ \$50,000
Metro Hauling, Inc., P.O. Box 88824, Seattle, WA; motor carrier; The Travelers Indemnity Co. (PB 11/28/79) D 12/2/82	Nov. 28, 1982	Dec. 2, 1982	Seattle, WA \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
P & H Transportation, Inc., 6939 Old Clinton Dr., Houston, TX; motor carrier; Washington International Ins. Co.	Dec. 16, 1982	Dec. 16, 1982	Houston, TX \$50,000
Purolator Courier Corp., 3333 New Hyde Park Rd., New Hyde Park, NY; motor and air carrier; American Casualty Co. of Reading, PA	Dec. 7, 1982	Dec. 9, 1982	Cleveland, OH \$100,000
Reilly Transportation Co., 2808 ITM Bldg., New Orleans, LA; motor carrier; Ins. Co. of North America	Sept. 1, 1982	Nov. 19, 1982	New Orleans, LA \$25,000
Johnnie Richard dba: Richard Transportation, Inc., 802 Short St., Kenner, LA; motor carrier; Old Republic Ins. Co.	Nov. 23, 1982	Dec. 2, 1982	New Orleans, LA \$25,000
Road Wings, Inc., 1521 N.W. 82nd Ave., Miami, FL; motor carrier; Old Republic Ins. Co.	Oct. 25, 1982	Oct. 25, 1982	Miami, FL \$50,000
Roadrunner Trucking Inc., 4100 Edith, NE, Albuquerque, NM; motor carrier; Safeco Ins. Co. of America D 12/12/82	Dec. 12, 1979	Feb. 25, 1980	El Paso, TX \$25,000
Royal Express, Inc., 129 Westview Dr., P.O. Box 632, Bardstown, KY; motor carrier; Continental Ins. Co. D 12/14/82	Dec. 9, 1981	Dec. 16, 1981	Cleveland, OH \$100,000
TTC Transport Internat'l Commodities Inc., Hwy. 34, Alexandria, Ontario, Canada; motor carrier; The Hanover Ins. Co.	Aug. 11, 1982	Dec. 3, 1982	Ogdenburg, NY \$25,000
Varbus Enterprises, Inc., dba: Valley Truck Lines, 149 W. 6th St., Calexico, CA; motor carrier; Ins. Co. of North America (PB 1/31/79) D 12/16/82	Apr. 14, 1982	Dec. 16, 1982	San Diego, CA \$50,000

¹Principal is IKO Forwarders Ltd.

²Principal is Kopak, Inc., dba: K-Cartage Corp.; Surety is St. Paul Fire & Marine Ins. Co.

³Surety is Western Surety Co.

BON-3-03

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 18

Proposed Customs Regulations Amendment Relating to Special Manifest Procedures for Overcarried and Prematurely Discharged Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide detailed special manifest procedures for overcarried and prematurely discharged merchandise (merchandise which is unladen or discharged by the carrier at a Customs port other than the port for which the merchandise was manifested or destined) and other such types of movements whereby the normal transportation-in-bond procedures are not applicable. The special manifest procedures would authorize district directors of Customs at ports where such merchandise has been unladen or discharged to permit it to be returned as a bonded shipment under a special manifest to the destination shown on the importing carrier's manifest (manifested port). The use of these manifest procedures, which apply primarily to overland shipments, would allow the importer or carrier to include the returned merchandise in the original entry summary previously filed at the manifested port and obtain the rate of duty applicable to that entry.

DATES: Comments must be received on or before March 28, 1983.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Benjamin Mahoney, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Overcarried and prematurely discharged merchandise is imported merchandise which is unladen or discharged by the carrier at a Customs port other than the port for which the merchandise was manifested or destined.

For example, in the case of overcarried merchandise, a consumption entry is filed in New York (port of destination on manifest) to cover an entire shipment, but a portion of the shipment is inadvertently diverted to Miami where it is unladen or discharged. Prematurely discharged merchandise is where a consumption entry is filed in Miami (port of destination on manifest) to cover an entire shipment, but a portion of the shipment is inadvertently discharged in New York (port of entry). In each case, the importer wishes to return the overcarried or prematurely discharged merchandise to the manifested port and have it included in the original entry summary filed there and obtain the rate of duty applicable to that entry. This is significant because under section 315, Tariff Act of 1930, as amended (19 U.S.C. 1315), except as otherwise specially provided for, the rate of duty imposed on articles entered for consumption or withdrawn from warehouse is the rate in effect when the document comprising the entry for consumption or withdrawal for consumption and any estimated duties then required to be paid have been deposited with the Customs at the manifested port.

The regulations now provide two different manifest procedures whereby prematurely discharged or overcarried merchandise may be returned to the manifested port.

(1) Under section 4.34 (a) and (b), Customs Regulations (19 CFR 4.34(a) and (b)), which relates specifically to vessel shipments, upon receipt of a satisfactory written application from the owner or agent of the vessel establishing either that cargo was prematurely landed and left behind by the importing vessel through error or emergency or was not landed at its destination and was overcarried to another domestic port through error or emergency, the district director may permit the cargo to be returned in the importing vessel, or in another vessel owned or chartered by the owner of the importing vessel, to the destination shown on the Cargo Declaration, Customs Form 1302, of the importing vessel, provided the importing vessel actually entered the port of destination.

(2) Under section 18.10a, Customs Regulations (19 CFR 18.10a), which relates primarily to overland shipments, merchandise for which no other type of bonded movement is appropriate may be shipped in bond from one port to another when such shipment is authorized by the district director having custody of the merchandise. For this purpose Customs Form 7512 is to be used as a special manifest. The manifest procedures are set forth in detail in Customs Circular TRA-7-EV, dated September 17, 1963.

Section 484, Tariff Act of 1930, amended (19 U.S.C. 1484) requires that a separate entry be filed for each shipment arriving in the United States. When an immediate transportation entry (I.T.) is separately filed for a portion of the original shipment, that portion is considered a separate shipment, and thus a separate consumption entry must be made for that portion of the merchandise even though a consumption entry was previously filed at the manifested port covering the entire shipment.

It has come to Customs attention that some overland freight carriers have been returning overcarried and prematurely discharged merchandise to the manifested port under an I.T. entry instead of using the special manifest procedures referred to in section 18.10a. In some cases this has resulted in a rate of duty and/or date of importation different from that applied to the merchandise which was timely delivered to the manifested port and covered under the original entry summary. To solve this problem, Customs Headquarters issued Ruling No. 711164, dated October 18, 1976, which held that merchandise, whether overcarried or prematurely discharged, may be included in an entry summary for consumption already filed at the manifested port and subject to the rates of duty applicable to that entry summary, if returned under one of the two special manifest procedures discussed above. The ruling also held that if, instead of the special manifest procedure, overcarried or prematurely discharged merchandise is returned to the manifested port under an I.T. entry, the returned merchandise would be accorded the same status as any other arrival of merchandise under an I.T. entry, unless the district director is satisfied that the filing of the I.T. entry was done because of a clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)). Under these circumstances, the district director may permit the substitution of a special manifest for the I.T. entry.

Before issuance of Ruling No. 711164, *supra*, Customs headquarters conducted an informal survey of its field offices to ascertain views on requiring the use of one of the two special manifest procedures for returning overcarried or prematurely discharged merchandise to the manifested port. While the ruling was favorably received, it was revealed that in many cases an I.T. entry was being filed and accepted for the returned merchandise because some Customs personnel and carriers were simply unfamiliar with the special manifest procedures referred to in section 18.10(a), Customs Regulations.

Accordingly, to clarify this situation, it is proposed to amend section 18.10a, Customs Regulations, to provide detailed manifest procedures for returning overcarried and prematurely discharged merchandise to the manifested port. These procedures would apply also to other types of movements whereby the normal in-bond procedures are not applicable.

LIST OF SUBJECTS IN 19 CFR PART 18

Customs duties and inspection, imports, common carriers, freight forwarders, motor carriers, and freight.

PROPOSED AMENDMENT TO THE REGULATIONS

It is proposed to amend Part 18, Customs Regulations (19 CFR Part 18), in the following manner:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Section 18.10a, Customs Regulations (19 CFR 18.10a), would be revised to read as follows:

§ 18.10a Special manifest.

(a) *General.* Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the normal transportation-in-bond procedures are not applicable) may be shipped in bond from the port of unloading to the destination shown on the importing carrier's manifest (manifested port) when authorized by the district director having custody of the merchandise. For this purpose, Customs Form 7512 prepared in quadruplicate shall be used as a special manifest.

(b) *Manifest procedures.* (1) Written application shall be made to the district director where the merchandise is being held for permission to return it as a bonded shipment under a special manifest to the manifested port.

(2) The application and accompanying completed Customs Form 7512 shall identify the prematurely discharged or overcarried merchandise on the inward manifest of the importing carrier, and identify the date and entry number of any entry made at the manifested port covering the merchandise to be returned. If the district director is satisfied that the merchandise will be delivered to Customs custody at the manifested port before expiration of 90 days from the date of the entry identified, or 90 days from the date of the importing carrier's arrival at the manifested port when no entry is identified, the district director may approve the shipment under a special manifest.

AUTHORITY

The amendment is proposed under the authority of R.S. 251, as amended, sections 315, 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 759 (19 U.S.C. 66, 1315, 1484, 1498, 1624).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Cus-

toms. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m., and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the proposed amendment will not have a significant economic impact on a substantial number of small entities.

In addition, the proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, the Secretary of the Treasury certifies under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: January 5, 1983.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 25, 1983 (48 FR 3379)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of \$0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

The microfiche referred to above contains rulings/decisions published or listed in the *Customs Bulletin*, many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of \$0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost (\$0.15) per sheet of fiche.

It is anticipated that additions to both sets of microfiche will be made quarterly. Requests for subscriptions for the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: January 26, 1983.

B. JAMES FRITZ,
*Director, Regulations Control
and Disclosure Law Division.*

Date	Number	Issue
01-05-83	105914	Vessels: Sleds, not designed for and incapable of floating on water, towed by an Archimedean Screw Tractor between coastwise points over a solidly frozen ocean are not "vessels" for purposes of the coastwise towing statute (46 U.S.C. 316(a)).
01-05-83	105925	Vessels: Repairs and equipment purchases for a vessel which are necessitated by "casualties" and the duties on the costs thereof qualify for remission under 19 U.S.C. 1466(d)(1).
01-13-83	105962	Instruments of International Traffic: Portable heaters used conjointly with containers to prevent merchandise from freezing qualify as instruments of international traffic pursuant to section 10.41(a), Customs Regulations.
11-12-82	542894	Transaction Value: Pursuant to section 402(b), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, the price paid to a manufacturer is the price actually paid or payable for the merchandise when purchased through a trading house which is related to the importer.
11-26-82	542957	Transaction Value: Charges for vacuum packaging and related services performed on merchandise after it is packed in a condition ready for shipment to the United States are not dutiable under transaction value.
11-24-82	542959	Transaction Value: Pursuant to section 402(b)(4)(B), Trade Agreements Act of 1979, a price decrease negotiated subsequent to importation does not reduce appraised value.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis

James L. Watson
Bernard Newman
Nils A. Boe

Senior Judges

Samuel M. Rosenstein

Herbert N. Maletz

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 83-5)

AMERICAN AIR PARCEL FORWARDING COMPANY LTD., A HONG KONG CORPORATION; AND E. C. McAFEE COMPANY, A MICHIGAN CORPORATION, FOR THE ACCOUNT OF AMERICAN AIR PARCEL FORWARDING COMPANY, LTD., PLAINTIFFS *v.* UNITED STATES OF AMERICA; THE SECRETARY OF THE TREASURY; UNITED STATES CUSTOMS SERVICE; THE COMMISSIONER OF CUSTOMS, UNITED STATES CUSTOMS SERVICE; THE ASSISTANT COMMISSIONER OF CUSTOMS (COMMERCIAL OPERATIONS), UNITED STATES CUSTOMS SERVICE; DIRECTOR, OFFICE OF REGULATIONS AND RULINGS, UNITED STATES CUSTOMS SERVICE; AND DISTRICT DIRECTOR OF CUSTOMS, UNITED STATES CUSTOMS SERVICE, DETROIT, MICHIGAN; JOINTLY AND SEVERALLY, DEFENDANTS

Court No. 82-2-00165

Before LANDIS, *Judge*.

Memorandum opinion and order on motion to dissolve preliminary injunction and motion to dismiss the action and various consolidated motions

[Motions decided in accordance with memorandum opinion.]

(Dated January 19, 1983)

Richard A. Kulics, attorney for plaintiff E. C. McAfee Company, a Michigan Corporation, for the Account of American Air Parcel Forwarding Company, Ltd.

Goodman, Miller & Miller (Jonathan Miller of counsel) for the plaintiff American Air Parcel Forwarding Company, Ltd., a Hong Kong Corporation.

J. Paul McGrath, Assistant Attorney General; *Jospeh I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Susan L. Handler-Menahem* and *Madeline Kuflik* of counsel), for the defendants.

LANDIS, Judge: Once again this action is before the court to determine various measures of relief sought by the parties.

On August 31, 1982, this court sitting in New York, New York granted plaintiffs' motion for a preliminary injunction. *American Air Parcel Forwarding Company, Ltd. v. United States*, 4 CIT —, Slip Op. 82-69 (Aug. 31, 1982). Within the next two (2) days, to wit, on September 2, 1982, the Court of Customs and Patent Appeals (now the United States Court for the Federal Circuit), in Washington, D.C., handed down a decision in *United States v. Uniroyal, Inc.*, 687 F. 2d 467, Appeal 82-9 (Sep. 2, 1982) reversing the trial court's (this court's) jurisdiction. This decision is discussed hereafter.

Since this court's decision on August 31, 1982, the parties have filed twenty (20) additional documents and numerous correspondences. Additionally, they filed six (6) motions¹ and a hearing was held on certain related motions. With the exception of the motion relating to a three judge panel which, pursuant to Rule 77(d)(2) of this court, was referred to the Chief Judge and, in fact, has been denied by Chief Judge Re (see 4 CIT —, Slip Op. 82-84 (Oct. 6, 1982)), all pending motions are consolidated for purposes of disposition in this opinion.

Initially, the court will examine defendants' motion to dissolve the preliminary injunction and to dismiss for lack of jurisdiction as the court cannot grant an injunction when it lacks jurisdiction over the subject matter of the action. *Kean v. Hurley*, 179 F. 2d 888 (8th Cir. 1950).

Plaintiffs brought this action claiming jurisdiction pursuant to 28 U.S.C. § 1581(i) and 28 U.S.C. § 1581(h).² Defendants claim that this court lacks jurisdiction as plaintiffs have not exhausted their administrative remedies provided by statute.

Reviewing 28 U.S.C. § 1581(i), frequently referred to as the residual or "catch-all" jurisdiction provision, the court finds no legislative intent to grant a litigant use of this forum where the litigant has failed to exhaust the avenue of protest and denial before the Customs Service and payment of liquidated duties. In the leading case recently issued by the United States Court of Customs and Patent Appeals (now the United States Court for the Federal Circuit), the court succinctly stated:

¹ The motions filed are as follows:

- (a) Defendants' motion to dissolve the preliminary injunction and to dismiss the action for lack of jurisdiction;
- (b) Defendants' motion to stay all proceedings pending determination of defendants' motion to dissolve the preliminary injunction and dismiss the action for lack of jurisdiction;
- (c) Plaintiff *American Air Parcel's* ex parte motion to hold the District Director of Customs for Detroit, Michigan, Nicholas Devine and Ray Navarra in contempt for failure to honor this court's preliminary injunction dated August 31, 1982;
- (d) Plaintiff *American Air Parcel's* motion to void, *ab initio*, a certain telex issued by Customs known as 73-28;
- (e) Plaintiff *E. C. McAfee's* motion for a three judge panel;
- (f) Plaintiff *American Air Parcel's* ex parte motion to shorten time for defendants' response to the motion for a three judge panel.

² These statutes read as follows:

28 U.S.C. § 1581(i)

In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

- (1) Revenue from imports or tonnage;
- (2) Tariffs, duties, fees or other taxes on the importation of merchandise for reasons other than the raising of revenue;
- (3) Embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
- (4) Administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

28 U.S.C. § 1581(h)

The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

Nevertheless, the legislative history of the Customs Courts Act of 1980 demonstrates that Congress did not intend the Court of International Trade to have jurisdiction over appeals concerning completed transactions when the appellant had failed to utilize an avenue for effective protest before the Customs Service.

United States v. Uniroyal, Inc., 687 F. 2d 467, 471, Appeal 82-9 (Sept. 2, 1982).

It is judicially apparent that where a litigant has access to this court under traditional means, such as 28 U.S.C. § 1581(a), it must avail itself of this avenue of approach complying with all the relevant prerequisites thereto. It cannot circumvent the prerequisites of 1581(a) by invoking jurisdiction under 1581(i) as the latter section was not intended to create any new causes of action not founded on other provisions of law.³

Defendants next contend that this court lacks jurisdiction under 28 U.S.C. § 1581(h) as the subject merchandise has been imported, liquidated and entered into the stream of commerce. Furthermore, defendants contend that this court's power under section 1581(h) is limited to declaratory relief pursuant to 28 U.S.C. § 2643.

This part of defendants' motion affects the twelve entries listed in the summons. These entries were imported into this country between March 3, 1980 and August 1, 1980. The ruling in issue, C.S.D. 81-72 (TAA #10), was promulgated on October 17, 1980. Thus, TAA #10 was issued *subsequent* to the twelve entries set forth in the summons.

When this court originally issued the injunction on August 31, 1982, it relied upon its general equity powers in conjunction with 28 U.S.C. § 1581(i) for subject matter jurisdiction over the previously imported goods. Although sparse, the case law developed at the time the injunction issued generally indicated that under proper circumstances the court could invoke subject matter jurisdiction in lieu of the usual protest avenue of review.

In *Wear Me Apparel Corporation v. United States*, 1 CIT 60 (1980), the court denied a preliminary injunction brought pursuant to section 1581(i) (3) and (4). However, the court specifically stated:

The Court wishes to stress that its ruling herein should not be interpreted to mean that exhaustion of administrative remedies is invariably a condition precedent to granting preliminary injunctive relief. (Slip-Op 80-13 at 6). (Italic in original)

³The House of Representatives' report accompanying the Customs Courts Act of 1980 referring to 1581(i) reads in pertinent part:

Subsection (i) is intended only to confer subject matter jurisdiction upon the court, and not to create any new causes of action not founded on other provisions of law.

The purpose of this broad jurisdictional grant is to eliminate the confusion which currently exists as to the demarcation between the jurisdiction of the district courts and the Court of International Trade. This provision makes it clear that all suits of the type specified are properly commenced only in the Court of International Trade. The Committee has included this provision in the legislation to eliminate much of the difficulty experienced by international trade litigants who in the past commenced suits in the district courts only to have those suits dismissed for want of subject matter jurisdiction. The grant of jurisdiction in subsection (i) will ensure that these suits will be heard on their merits. (Italic supplied.)

H.R. Rep. No. 96-1285, 96th Cong., 2d Sess. 47 (1980).

See also, *Wear Me Apparel Corporation v. United States*, 1 CIT 194, 511 F. Supp 814 (1981).

Defendants final jurisdictional assault relates to the prospective importation of merchandise under section 1581(h). Here, defendants argue that plaintiffs must adhere to the traditional method of judicial review by initially having a protest denied. Specifically, defendants contend that the subject ruling is not a ruling in the meaning of section 1581(h) as it was an internal advice ruling and, additionally, that defendants have not met the stringent standards of proving irreparable harm.

Defendants' irreparable harm argument may be readily disposed of as this court after hearings and perusing numerous documents found that absent the granting of the preliminary injunction plaintiffs would be irreparably harmed. This finding was the major cornerstone in granting plaintiffs the preliminary injunction on August 31, 1982.

Of paramount interest is defendants' argument relating to the type of ruling to which section 1581(h) applies. The ruling in issue, TAA #10, is an internal advice ruling which is authorized under Customs regulations, 19 C.F.R. § 177.11. Defendants argue that Congress specifically exempts internal advice rulings from being subject to judicial review under section 1581(h). In support of its contention defendants cite directly a portion of the law's legislative history.

The time-honored rule is that the court does not possess jurisdiction to review a ruling or a refusal to issue or change a ruling by the Secretary of the Treasury unless it relates to a subject matter presently within the jurisdiction of the United States Customs Court, for example, an action brought pursuant to section 515 of the Tariff Act of 1930. The Committee intends a very narrow and limited exception to that rule. The word 'ruling' is defined to apply to a determination by the Secretary of the Treasury as to the manner in which it will treat the contemplated transaction. *In determining the scope of the definition of a 'ruling,' the Committee does not intend to include 'internal advice' or a request for 'further review,' both of which relate to completed import transactions.* (Italic supplied.) H.R. Rep. No. 96-1235, *supra*, 46.

The Court believes that the underscored legislative history is convincing.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that defendants' motion to dissolve the preliminary injunction issued August 31, 1982 and to dismiss the action is, in all respects granted; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff American Air Parcel's motion to hold the District Director of Customs, Detroit, Michigan, Nicholas Devine, and Ray Navarra in contempt is denied as moot; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff American Air Parcel's motion to void *ab initio* telex 73-28 is denied as moot; and it is further

ORDERED, ADJUDGED AND DECREED that defendants' motion to stay all proceedings pending decision on the motions to dissolve the preliminary injunction and to dismiss the action is denied as moot; and it is further

ORDERED, ADJUDGED AND DECREED that this action is hereby dismissed.

Let judgment enter accordingly.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, January 20, 1983.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general-interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
P83/11	Newman, J. January 13, 1983	Dyn Electronics, Inc.	79-4-00583, etc.	Items 685.21 and 685.23 10.4%	Items 685.25, 685.26 or 685.29 6%	Audionox Corp. v. U.S. Slip Op. 81-11 (CIT 1/27/81)	Miami FM converters

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P83/12	Newman, J. January 13, 1983	F. W. Myers & Co., Inc.	73-1-00290	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty			F. W. Myers & Co. v. U.S. (C.D.'s 4635 and 4872)	Detroit Sponge iron powders
P83/13	Newman, J. January 13, 1983	F. W. Myers & Co., Inc.	75-12-03254-S1	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty			F. W. Myers & Co. v. U.S. (C.D.'s 4635 and 4872)	Champlain-Rouses Point (Ogdensburg); Buffalo-Niagara Falls (Buffalo); Port Huron (Detroit) Sponge iron powders
P83/14	Newman, J. January 13, 1983	Gant Corp.	81-6-00791	Item 380.00 35%	Item 380.27 21%			T.D. 81-214 of 8/17/81	New York Men's long sleeve cotton woven dress shirts
P83/15	Newman, J. January 14, 1983	Alltransport, Inc.	79-5-00810	Item 708.89 22.5%	Item 708.80 15%			Wild Heerbrugg Instruments, Inc. v. U.S. (C.D. 4767, reh'g denied, C.D. 4781)	New York Microscopy phototubes
P83/16	Newman, J. January 14, 1983	Audiovox Corp.	81-9-01199	Item 685.21 or 865.24 10.4% (merchandise marked "A" and "B")	Item 685.25 or 685.29 Free of duty pursuant to GSP (merchandise marked "A") Item 685.25, 685.28 or 685.29 6% (merchandise marked "B")			Audiovox Corp. v. U.S. Slip Op. 81-11 (CTT 1/27/81)	New York Converters, products of eligible beneficiary country (merchandise marked "A"); converters (merchandise marked "B")
P83/17	Newman, J. January 14, 1983	Border Brokerage Co., Inc., et al.	80-2-00324, etc.	Item 652.35 9.5%	Item 652.18 6%			Agreed statement of facts	Blaine (Seattle) Chain
P83/18	Newman, J. January 14, 1983	Creative Playthings, Div. of Columbia Broadcasting System	76-10-02329	Item 737.90 17.5%	Item 737.55 10.5%			Judgment on the pleadings, Creative Playthings, Div. of Columbia Broadcasting System v. U.S. (C.D. 4754)	New York Cloth bricks

P83/19	Newman, J. January 14, 1983	Creative Playthings, Div. of Columbia Broadcast- ing System	78-12-02315	Item 787.90 17.5%	Item 787.55 10.5%	Judgment on the pleadings, Creative Playthings, Div. of Columbia Broadcasting System v. U.S. (C.D. 4754)	New York Cloth bricks
P83/20	Maletz, S. J. January 14, 1983	Selecta, Inc.	81-6-00492	Item 359.50 25¢ per lb. + 30%	Item 355.25 12¢ per lb. + 15%	Agreed statement of facts	Baltimore Nonwoven fabrics
P83/21	Newman, J. January 17, 1983	Harper's Bazaar	82-6-00871	Entry deemed liquidated by operation of law at rate and amount of duties assessed by importer at time of entry; merchandise assessed with increased duties; increased duties paid by plaintiff	Merchandise entitled to duty- free treatment under item 800.00; increased duties of \$4,892.15, plus interest, should be refunded to plaintiff	Agreed statement of facts	New York Various articles of apparel
P83/22	Newman, J. January 17, 1983	Lifo Industries, Inc.	81-7-00964	Item 382.02 42.5%	Item 382.83 37.5¢ per lb. + 21%	Agreed statement of facts	New York Ladies wool woven shirt (style No. 44085)
P83/23	Newman, J. January 17, 1983	Uniroyal, Inc.	80-8-01219- S	Item 637.25 9.5%	Item 772.55 4%	Uniroyal, Inc. v. U.S. (Abs. P80/59)	Baltimore Rubber hose, pipe or tubing in various lengths with at- tached fittings
P83/24	Newman, J. January 17, 1983	Uniroyal, Inc.	80-10- 01799-S1	Item 637.25 9.5%	Item 772.55 3.9%	Uniroyal, Inc. v. U.S. (Abs. P80/59)	Champlain-Rouses (Ogdensburg) Point Rubber hose, pipe or tubing in various lengths with at- tached fittings
P83/25	Newman, J. January 19, 1983	Olsen Sound Devices, Inc.	78-3-00372, etc.	Item 737.90 and 737.95 17.5%	Item 835.32 5.5%	Agreed statement of facts	New York Talking mechanisms; phono- graphs

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
B83/81	Re. C.J. January 13, 1983	Joseph Markovits, Inc.	73-12-03510	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York; New Orleans Not stated
B83/82	Newman, J. January 13, 1983	Inter Pacific Corp.	81-7-00842	Export value	Invoice unit price net packed	Agreed statement of facts	Los Angeles Footwear
B83/83	Newman, J. January 13, 1983	Topp Electronics, Inc.	79-5-00873	Constructed value	Values specified on entry papers by liquidating of- ficer excluding one-half of amount added for as- sists as set forth on schedule of protests at- tached to decision and judgment	Agreed statement of facts	New York; Los Angeles Not stated

R83/84	Newman, J. January 13, 1983	Topp Electronics, Inc.	79-12-01809	Constructed value	Values specified on entry papers by liquidating of floor excluding one-half of amount added for assistants as set forth on schedule of protests attached to decision and judgment	Agreed statement of facts	Los Angeles Not stated
R83/85	Newman, J. January 13, 1983	Topp Electronics, Inc.	79-12-02028	Constructed value	Values specified on entry papers by liquidating of floor excluding one-half of amount added for assistants as set forth on schedule of protests attached to decision and judgment	Agreed statement of facts	Los Angeles; San Francisco; Charleston; Miami Not stated
R83/86	Newman, J. January 13, 1983	Topp Electronics, Inc.	80-8-01335	Constructed value	Values specified on entry papers by liquidating of floor excluding one-half of amount added for assistants as set forth on schedule of protests attached to decision and judgment	Agreed statement of facts	Los Angeles; New York Not stated
R83/87	Watson, J. January 13, 1983	M. G. Maher Co. Inc.	R65/22375	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Orleans Tube mats
R83/88	Watson, J. January 13, 1983	Providence Import Co.	276726-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Wool hooked rugs, etc.
K44/80	Watson, J. January 13, 1983	Providence Import Co.	R61/10069	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	New Orleans Wool hooked rugs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/90	Watson, J. January 13, 1983	Rugby International Corp.	R64/14507, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Houston Tube mats
R83/91	Watson, J. January 13, 1983	Rugby International Corp.	R64/20027, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Philadelphia Tube mats, etc.
R83/92	Watson, J. January 13, 1983	Rugby International Corp. et al.	R65/6977, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Norfolk Tube mats
R83/93	Watson, J. January 13, 1983	Toyo Rug Co., Ltd.	R60/18959	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	Philadelphia Wool and hooked rugs
R83/94	Watson, J. January 13, 1983	W. R. Zane & Co.	R60/17182	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit in- voice prices and ap- praised values	Agreed statement of facts	New Orleans Wool tube rugs
R83/95	Re, C.J. January 17, 1983	Impecco Ltd.	77-7-01304	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/96	Re, C.J. January 17, 1983	Metasco, Inc.	75-12-03160, etc.	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated

R83/97	Re, C.J. January 17, 1983	Metasco, Inc.	76-9-02203, etc.	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/98	Re, C.J. January 17, 1983	Sportswear International Ltd.	76-12-02762, etc.	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/99	Re, C.J. January 17, 1983	YKK Zipper (Mo). Inc.	75-2-00466, etc.	Export value	Appraised values shown on entry papers less addi- tions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago Not stated

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, January 26, 1983.

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

Investigation No. 701-TA-187 (Final)

CERTAIN TOOL STEELS FROM BRAZIL

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: January 3, 1983.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (19 U.S.C. §1671), are being provided to manufacturers, producers, or exporters in Brazil of certain tool steels provided for in items 606.93, 606.94, 606.95, 607.28, 607.34, 607.46, and 607.54 of the Tariff Schedules of the United States, the United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-187 (Final) under section 705(b) of the act (19 U.S.C. §1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final countervailing duty determination in the case on or before March 14, 1983, and the Commission will

make its final injury determination by May 2, 1983 (19 CFR § 207.25).

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Miller (202-523-0305), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On September 13, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of certain tool steels alleged to be subsidized by the Government of Brazil. The preliminary investigation was instituted in response to a petition filed on July 30, 1982, by counsel for several specialty steel producers and the United Steelworkers of America.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to section 201.11(d) of the Commission's rules (19 CFR § 201.11(d), as amended by 47 F.R. 6189, Feb. 10, 1982). A copy of the nonconfidential version of each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR § 201.16(c), as amended by 47 F.R. 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on March 9, 1983, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a joint hearing in connection with this investigation and with inv. No. 731-TA-100 (Final), Certain Tool Steel from the Federal Republic of Germany, beginning at 10:00 a.m. on March 23, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing

with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 1, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on March 4, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 18, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR § 207.23, as amended by 47 F.R. 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 (19 CFR § 207.22, as amended by 47 F.R. 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR § 207.24, as amended by 47 F.R. 6191, Feb. 10, 1982) and must be submitted not later than the close of business on April 1, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 1, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 47 F.R. 6190, Feb. 10, 1982, and 47 F.R. 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6188, Feb. 10, 1982; 47 F.R. 13791, Apr. 1, 1982; and 47 F.R. 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR § 207.20, as amended by 47 F.R. 6190, Feb. 10, 1982).

By order of the Commission.

Issued: January 17, 1983.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN SILICA-COATED LEAD
CHROMATE-PIGMENTS

} Investigation No. 337-TA-120

*Commission Hearing on the Presiding Officer's Recommendation
and on Relief, Bonding, and the Public Interest, and the Sched-
ule for Filing Written Submissions*

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337-TA-120, Certain Silica-Coated Lead Chromate Pigments.

Notice is hereby given that the presiding officer in this investigation has issued a recommended determination that there is no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the unauthorized importation into the United States and in the sale of the silica-coated lead chromate pigments that are the subject of the investigation. Accordingly, the presiding officer's recommendation and the record have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (as well as any other public documents on the record of the investigation) by contacting the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0176.

COMMISSION HEARING: The Commission will hold a public hearing on March 14, 1983, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that no violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order

to facilitate the completion of this investigation within time limits established under law and to minimize the burden upon the parties.

ORAL ARGUMENTS: Parties to the investigation and interested Government agencies may present oral arguments concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

ORAL PRESENTATIONS ON RELIEF, BONDING, AND THE PUBLIC INTEREST: Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondents' being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

TIME LIMIT FOR ORAL ARGUMENT AND ORAL PRESENTATION: Complainant, respondents (taken collectively), the Commission investigative attorney, and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making only oral presentations on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on February 10, 1983; written submissions on the questions of remedy, bonding, and the public interest must be filed not later than the close of business on February 17, 1983. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by March 7, 1983.

ADDITIONAL INFORMATION: Persons submitting briefs and/or written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to discuss confidential information or to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by

the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of April 21, 1982, 47 F.R. 17134.

FOR FURTHER INFORMATION CONTACT: Gracia M. Berg, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

By order of the Commission.

Issued: January 19, 1983.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN MINIATURE PLUG-IN
BLADE FUSES

} Investigation No. 337-TA-114

Notice of Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order.

SUPPLEMENTARY INFORMATION: On November 22, 1982, the Commission unanimously determined with respect to the above-captioned investigation that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation of certain miniature plug-in blade fuses into the United States, and in their sale, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. The Commission subsequently determined on December 1, 1982, that a general exclusion order pursuant to subsection (d) of section 337 is the most appropriate remedy for the violation found to exist, that the public-interest factors enumerated in subsection (d) do not preclude the issuance of such an order, and that the amount of the bond under subsection (g) of section 337 should be 90 percent of the entered value of the articles concerned. The Commission's Action and Order and the Commission Opinion in support thereof were issued on January 13, 1983.

The notice instituting the investigation and defining its scope was published in the Federal Register on January 13, 1982 (47 F.R. 1448).

The Commission Action and Order, the Commission Opinion, and all other nonconfidential documents on the record of the investiga-

tion are available for public inspection Monday through Friday during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

By order of the Commission.

Issued: January 13, 1983.

KENNETH R. MASON,
Secretary.

Investigation No. 731-TA-58 (Final)

HOT-ROLLED CARBON STEEL PLATE FROM ROMANIA

AGENCY: United States International Trade Commission.

ACTION: Suspension of final antidumping investigation.

EFFECTIVE DATE: January 4, 1983.

SUMMARY: On January 4, 1983, the United States Department of Commerce suspended its antidumping investigation involving hot-rolled carbon steel plate from Romania (48 F.R. 317). The basis for the suspension is an agreement by Metalimportexport, an exporter which accounts for all known U.S. imports of this product from Romania, to revise its prices to eliminate sales of such merchandise to the United States at less than fair value. Accordingly, the United States International Trade Commission hereby gives notice of the suspension of its antidumping investigation involving hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated, from Romania (investigation No. 731-TA-58 (Final)).

EFFECTIVE DATE: January 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger (202-523-0312), Office of Investigations, U.S. International Trade Commission.

This notice is published pursuant to section 207.40 of the Commission's Rules of Practice and Procedure (19 CFR § 207.40).

By order of the Commission.

Issued: January 11, 1983.

KENNETH R. MASON,
Secretary.

*Investigation No. 104-TAA-15***BICYCLE TIRES AND TUBES FROM TAIWAN**

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Pursuant to section 104(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. § 1671 note), the United States International Trade Commission is instituting this countervailing duty investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of bicycle tires and tubes from Taiwan provided for in items 772.48 and 772.57 of the Tariff Schedules of the United States, covered by an outstanding countervailing duty order, if the order were to be revoked.

EFFECTIVE DATE: January 10, 1983.

FOR FURTHER INFORMATION CONTACT: Jim McClure, Supervisory Investigator, Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-523-0439.

SUPPLEMENTARY INFORMATION:

Background.—On January 8, 1979, the Department of the Treasury (Treasury) published in the Federal Register (44 F.R. 1815) a final countervailing duty determination with respect to bicycle tires and tubes from Taiwan. Treasury determined that benefits have been paid but that they involve an aggregate amount considered to be de minimus and therefore no bounty or grant is being paid or bestowed within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. § 1303). On March 8, 1979, counsel for the petitioner filed suit in the U.S. Customs Court to challenge Treasury's final countervailing duty determination.

On January 1, 1980, the provisions of the Trade Agreements Act of 1979 (P.L. 96-39) became effective, and on January 2, 1980, the authority for administering the countervailing duty statutes was transferred from Treasury to the Department of Commerce (Commerce).

On June 19, 1981, the U.S. Court of International Trade stayed the proceedings, vacated Treasury's negative countervailing duty determination, and remanded the case to the Secretary of Commerce for further inquiries as needed to determine the ad valorem benefit provided to the Taiwanese bicycle tire and tube manufacturers. On August 3, 1981, Commerce published in the Federal Register (46 F.R. 53201) its final countervailing duty determination in the reopened investigation that one Taiwanese manufacturer,

Cheng Shin Rubber Company Ltd. (Cheng Shin) received bounties or grants within the meaning of section 303 of the Tariff Act of 1930. The net amount of the subsidy was determined by Commerce to be 0.893 percent.

On November 17, 1981, the Court of International Trade affirmed the results of the redetermination by Commerce. On February 17, 1982, pursuant to the court decision of November 17, 1981, Commerce published in the Federal Register (47 F.R. 6913) a countervailing duty order with respect to bicycle tires and tubes manufactured by Cheng Shin, determining that the amount of the net subsidy was 0.893 percent. Commerce also announced its intent to conduct an administrative review of the order within twelve months.

As required by section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)), Commerce has conducted its first administrative review of that countervailing duty order and on December 9, 1982, as a result of that review, published in the Federal Register (47 F.R. 55406) its preliminary determination that the amount of net subsidy for bicycle tires and tubes manufactured by Cheng Shin is 0.90 percent of the f.o.b. invoice price of the merchandise.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to section 201.11(d) of the Commission's rules (19 CFR § 201.11(d), as amended by 47 F.R. 6189, Feb. 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR § 201.16(c), amended by 47 F.R. 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on February 14, 1983, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation concurrently with the hearing for countervailing duty investigation No. 104-TAA-14, bicycle tires and tubes from Korea and antidumping investigation No. 731-TA-94 (Final), bicycle tires and tubes from Taiwan, beginning at 10:00 a.m., on

March 1, 1983, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 18, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m., on February 22, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 25, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR § 207.23, as amended by 47 F.R. 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing brief and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 (19 CFR § 207.22, as amended by 47 F.R. 33682, Aug. 4, 1982). Post hearing briefs must conform with the provisions of section 207.24 (19 CFR § 207.24, as amended by 47 F.R. 6191, Feb. 10, 1982) and must be submitted not later than the close of business on March 8, 1983.

Written submission.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 8, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 47 F.R. 6190, Feb. 10, 1982, and 47 F.R. 33682, Aug. 4, 1982), and part 201, subparts A

through E (19 CFR part 201, as amended by 47 F.R. 6188, Feb. 10, 1982; 47 F.R. 13791, Apr. 1, 1982; and 47 F.R. 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR § 207.20, as amended by 47 F.R. 6190, Feb. 10, 1982).

By order of the Commission.

Issued: January 10, 1983.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN LOG SPLITTING PIVOTED } Investigation No. 337-TA-113
LEVER AXES }

Notice of Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation on the basis of a settlement agreement.

SUMMARY: Complainant Chopper Industries, Inc., respondent All-trade, Inc., and the Commission investigative attorney moved on July 8, 1982, to terminate this investigation with respect to all respondents on the basis of a settlement agreement. On August 6, 1982, the presiding officer recommended that the investigation be terminated.

On September 22, 1982, the Commission issued a notice of proposed termination based on the settlement agreement and requested public comment. On December 20, 1982, the moving parties again moved for termination based on the agreement as modified to incorporate changes based on certain comments made by the Department of Justice. On January 5, 1983, the Commission terminated Inv. No. 337-TA-113 on the basis of the settlement agreement as modified.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain log splitting pivoted lever axes. Notice of the institution of the investigation was published in the Federal Register of January 6, 1982 (47 F.R. 3688).

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Sheila Landers, Esq.,
Office of the General Counsel, U.S. International Trade Commis-
sion, telephone 202-523-0421.

By order of the Commission.

Issued: January 6, 1983.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

Treasury decision:

Carrier bonds.....

T.D. No.

83-31

37

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